



36th MEETING

18 APRIL 2001

23-33 MARY STREET

SURRY HILLS NSW

PRESENT: Ms Barbara Biggins (Convenor)
Mr Jonathan O’Dea (Deputy Convenor)
Ms Glenda Banks
Ms Joan Yardley

APPLICANT: AXIS, a division of Adultshop.com Limited

BUSINESS: To review the decision of the Classification Board to assign the classification ‘RC’ under the *Classification (Publications, Films and Computer Games) Act 1995* to the film *Dream Quest* (so-called ‘R’ version).

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board decided to confirm the decision of the Classification Board to classify the film *Dream Quest* (so-called ‘R’ version) as RC Refused Classification.

2. Legislative provisions

2.1 The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) governs the classification of films and the review of classification decisions. The Act provides that films be classified in accordance with the National Classification Code and the classification guidelines.

- 2.2 Relevantly, section 11 of the Act requires that the matters to be taken into account in making a decision on the classification of a film include:
- a) the standards of morality, decency and propriety generally accepted by reasonable adults;
 - (b) the literary, artistic or educational merit (if any) of the film;
 - c) the general character of the film, including whether it is of a medical, legal or scientific character; and
 - d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.
- 2.3 The National Classification Code (the Code) requires that Classification decisions are to give effect, as far as possible, to the following principles:
- a) adults should be able to read, hear and see what they want;
 - b) minors should be protected from material likely to harm or disturb them;
 - c) everyone should be protected from exposure to unsolicited material that they find offensive; and
 - d) the need to take account of community concerns about:
 - i) depictions that condone or incite violence, particularly sexual violence; and
 - ii) the portrayal of persons in a demeaning manner.
- 2.4 Within the Code, paragraph 1 of the Table under the heading “Films” provides that films that “depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified” should be classified “RC.”
- 2.5 Further, the Code provides that films may be classified “X” if they:
- a) contain real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultive language, or fetishes or depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers, in a way that is likely to cause offence to a reasonable adult; and
 - b) are unsuitable for a minor to see.
- 2.6 The *Guidelines for the classification of films and videotapes (Amendment No. 3, 18 September 2000)* in relation to the “R18+” category provide, in part that, “Sexual activity may be realistically simulated; the general rule is ‘simulation, yes – the real thing, no.’” and “Nudity in a sexual context should not include obvious genital contact.”
- 2.7 In addition, the Guidelines in relation to the “X18+ Restricted” category provide, in part that, “No depiction of violence, sexual violence, sexualised violence or coercion is allowed in the category.”

3. Procedure

- 3.1 Four members of the Review Board viewed the film *Dream Quest* (so-called 'R' version) at its meeting on 18 April 2001.
- 3.2 Prior to viewing the film, the Review Board heard oral representations on behalf of the Applicant given by Ms Elvis Caneers-Barnes and Mr John Davey

4. Matters taken into account

- 4.1 In reaching its decision the Review Board had regard to the following:
- (a) the applicant's Application for Review, including written submissions in support of that Application.
 - (b) the film *Dream Quest* (so-called 'R' version)
 - (c) Written and oral submissions made by Ms Elvis Caneers-Barnes and Mr John Davey on behalf of the applicant
 - (d) the relevant provisions in the Act.
 - (e) the relevant provisions in the National Classification Code as amended in accordance with Section 6 of the Act, and as endorsed by the Censorship Ministers ('the Code').
 - (f) the current Classification Guidelines for the Classification of Films and Videotapes determined under Section 12 of the Act ('the Guidelines').

5. Findings on material questions of fact

- 5.1 *Dream Quest* is a film presented almost totally as a fantasy. In the opinion of the Review Board it contains real depictions of actual sexual intercourse and other sexual activity between consenting adults.
- 5.2 The Review Board found the film to contain numerous scenes which involved either actual sexual activity or nudity in a sexual context which included obvious genital contact, which would be sufficient to place the film in the X category. These scenes included :
- a) 12 minutes approx: female sexual activity, including masturbation, stroking of breasts, digital contact with genital areas;
 - b) 41 to 53 mins: sexual activity between three women, with repeated shots of digital and mouth contact with genital areas, mouth contact with anus, digital penetration of anus, and masturbation;
 - c) 75 to 82mins: female sexual activity including mouth and tongue on genital areas, digital penetration, insertion of objects/dildos into vagina and anus.
- 5.3 The Review Board next considered the scene cited by the Classification Board as leading to an RC classification (rather than X) due to violence. This scene was at 90 minutes. Feet are seen walking in the prison cell corridor as a male walks up behind a guard carrying a club, which he raises. The guard then falls and appears to have been rendered unconscious. The assailant takes the guard's keys to rescue Sarah from the prison cell.

5.4 In reviewing this scene, the Review Board was mindful that the new *Guidelines* prohibit depictions of violence in the X category. The Classification Review Board found violence to be present in this scene. The Review Board considered that *Dream Quest* was appropriately classified ‘RC’.

6. Reasons for the Decision

6.1 The Review Board based its decision to classify the film “RC” on its findings about the content of the film as described in 5.1 to 5.3 above and the Review Board’s application of the findings to the Guidelines and the Code.

6.2 The Applicant argued against the determination made by the the Classification Board of an ‘RC’ classification. It submitted that the Classification Board failed to:

- a) apply continuity to the classification decision across a number of adult films which depict simulated sexual activity in relation to the refused classification of *Dream Quest*.
- b) take full account of the wording and intent of the Classification Act and the National Classification Code.
- c) reasonably apply the Film Classification Guidelines as they relate to depictions of sexual activity.

Further, the applicant argued, in part, that the portrayals of sexual activity can be seen as simulated if there are no explicit and/or detailed shots of the genital areas, and if penetration is not shown. Such ‘simulated’ sex would include “oral sex, digital penetration, intercourse where the genitals of the participants are covered or shot in such a way as to be unclear in their contact ...”

6.3 The Review Board rejected the view put forward by the Applicant (as in 6.2 above) that for a depiction of sexual activity to be considered real rather than simulated, the depiction needs to be in closeup and detailed. The Review Board took the view that if there were depictions of nudity in a sexual context which involved obvious genital contact of any type, then this would constitute “genital contact” as described in the Guidelines. Further the Review Board noted the Macquarie Dictionary (3rd ed) definition of “sexual intercourse” as “sexual contact involving the genitals of at least one of the individuals.” The Review Board took the view that it was not necessary for actual penetration to occur for there to be actual sexual activity or obvious genital contact.

6.4 The Review Board found, as in 5.2 above , that there were at least several clear instances of vaginal penetration, or genital and/or anal contact by fingers, mouth/tongue or dildo, which would constitute “real depictions of actual sexual intercourse or sexual activity” , and/or “nudity in a sexual context which involved obvious genital contact”, and concluded that on, this content, the film would be appropriately classified X.

- 6.5 However, the recently revised Film Classification *Guidelines* prohibit depictions of violence in the X classification category. In seeking to establish whether the depictions were of acts of violence, the Review Board consulted the glossary of terms covering “violence”, which state that it “includes not only acts of violence, but also the threat or result of violence.”
- 6.6 The Review Board takes that view that violence would be found in a depiction of either a credible threat that physical force may be applied, or the actual application of such physical force, that appeared to be intended to physically harm an animate being or group of beings, in a way that a reasonable person would actually categorise as a depiction of violence.
- 6.7 The Review Board found that the scene at 90 minutes referred to in 5.3 above, did constitute violence, and therefore could not be accommodated within the X classification. While the hitting of the guard over the head is not clearly shown, the lead up (including lifting of club) and the consequences of the implicit impact are clearly evident. The Review Board was of the opinion that the scene as a whole would be viewed by a reasonable person as a depiction of violence, despite the level of violence being significantly less than that contained in many films which can be classified M, MA or R, because they do not contain actual depictions of real sexual activity.
- 6.8 The Review Board concluded that as the recently revised *Guidelines* prohibit depictions of violence in a film which contains real depictions of actual sexual activity, the film cannot be classified X, and is accordingly classified “RC”.

7. Summary

- 7.1 The Review Board's decision is to classify the *Dream Quest* RC (Refused Classification).
- 7.2 This decision is taken after consideration of the applicant's submission, and after assessing the film as a whole against the relevant legislative criteria, including those contained in the Code and in the current Classification Guidelines for Films and Videotapes determined under Section 12 of the Act.

Barbara Biggins
Convenor